

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Russell L. Rech,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 13R 537

Decision and Order Reversing the
Determination of the Douglas
County Board of Equalization

1. A Single Commissioner hearing was held on October 21, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Salmon.
2. Russell L. Rech (the Taxpayer) was present at the hearing.
3. Larry Thomsen, Appraiser for the Douglas County Assessor’s Office, was present for the Douglas County Board of Equalization (the County Board).
4. The Subject Property (Subject Property) is a 2 story single family dwelling, with a legal description of: Lot 21, Block 5, West End, Omaha, Douglas County, Nebraska.

Background

5. The Douglas County Assessor (the Assessor) assessed the Subject Property at \$125,200 for tax year 2013.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$82,000 for tax year 2013.
7. The County Board determined that the taxable value of the Subject Property was \$100,000 for tax year 2013.
8. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).

Issues & Analysis

9. The Commission’s review of the determination of the County Board of Equalization is de novo.¹ “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.”²

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

10. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴
11. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
12. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
13. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
14. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
15. The Taxpayer purchased the Subject Property in 2001. At the time of purchase, the Subject Property was converted from a multi-family parcel to a single family parcel. The Taxpayer asserted that he has done no renovations since the purchase in 2001. He asserted that the Subject Property’s valuation has jumped up and down since 2001 while other properties in the neighborhood have not changed. He provided the Commission with property records for 5 alleged comparable properties. The Taxpayer noted that two of the alleged comparable properties were similar in size to the Subject Property, but were still multi-family parcels.
16. The alleged comparable properties provided by the Taxpayer ranged in size, basement finish, quality, and use. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.⁹ The Commission finds that the properties included in the Taxpayer’s alleged comparable properties are not truly comparable.
17. The Appraiser stated that an interior and exterior inspection of the Subject Property had been completed by the Assessor’s Office. He noted that the living area, basement area

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

⁹ See generally, *Property Assessment Valuation*, 3rd Ed., International Association of Assessing Officers (2010) at 169-79.

and finish, bathrooms, and condition were listed incorrectly for January 1, 2013, assessment.

18. The Taxpayer provided a 2014 property record created by the County Board for a subsequent tax year that indicates an actual value of \$86,700 based on the new information furnished to the County Assessor through the inspection..
19. Larry Thomsen indicated that the actual value of the Subject Property for tax years 2013 and 2014 should be the same.
20. The Commission finds that the actual value of the Subject Property is \$86,700 for tax year 2013.
21. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
22. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property for tax year 2013, is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is:

Land	\$ 5,400
Improvements	\$81,300
Total	\$86,700

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013.
7. This Decision and Order is effective on October 21, 2014.

Signed and Sealed: October 21, 2014

Nancy J. Salmon Commissioner